

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2016 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RANBIRSINH V VAGHELA

Versus

G S R T C

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Appearance:

MR JD AJMERA for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 09/10/96

ORAL JUDGEMENT

The petitioner who is a bus driver was facing the charge of wrongly breaking the journey of a scheduled

trip on 17.10.1982 between Rajula and Una claiming breakdown of the bus on account of failure of headlights. On checking, the lights were found in order.

2 As a result of inquiry, the disciplinary authority passed an order of stoppage of three annual increments.

3 The reviewing authority in exercise of its powers, substituted the said penalty order by an order of dismissal.

4 As per the discipline and appeal rules, this order of dismissal being appealable, the appeal came to be filed on or about 3.8.1984, a copy is at Annexure-E to the petition at page no.17.

5 The petitioner withdrew the appeal and the circumstances which prompted him to do so are narrated in Annexure-F page 18. The petitioner who had been working for more than 22 years as a driver at about the time when the appeal was filed, having lost the job had to perform the marriage of his daughter. Obviously, he was in need of money. He was given to understand that if he withdraws the appeal, he will get all his dues.

6 Little realising that this would necessarily mean the continuation of the dismissal order as he was in need of money, the petitioner withdrew the appeal.

7 In the petition two prayers are made. One is about the dismissal order which wants to be set aside and the second is about revival of his appeal.

8 Looking to the facts and circumstances of the case, I agree with the contention of learned advocate Shri Hardik Raval, appearing for the respondent, that when there was an appeal pending and the petitioner himself want that appeal to be revived, this Court should not enter into the question as to whether the dismissal being proper or not. This is not to say that the Raval is agreeable to the revival of the appeal. However, in my opinion, this is the least that could be done. The petitioner who had already filed an appeal has at least reasonable expectation that his appeal being decided on merits. No doubt he has withdrawn the appeal himself. However, his withdrawal which would amount to impliedly acceptance of the order of dismissal and therefore may amount to an admission but when it has been explained in Annexure-F, page no.18, interest of justice will be served by giving one more opportunity to the petitioner

to get his appeal decided on merits.

9 The petition is therefore allowed to that limited extent. The departmental appeal which was filed as per Annexure-E, page 17, dated 3.8.1984 will stand revived. It shall be decided on merits and disposed of in accordance with law. The petition stand allowed to that extent with no order as to costs. Rule is made absolute accordingly.

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